The Constitutional Crisis in the Republic of Armenia through the lenses of the territorial changes: the legal challenges of Zangezur Corridor.

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***Abstract**: This article examines the proposed Zangezur Corridor/TRIPP Agreement project and its legal implications both from the point of view of international law and the constitutional framework of the Republic of Armenia. Special attention is paid to the legal status of international treaties related to territorial changes and the constitutional requirements for their validity. The analysis is based on the Vienna Convention on the Law of Treaties (1969) (hereinafter referred to as the "VCLT"), in particular Articles 46, 48 and 52, which may serve as grounds for invalidating international treaties concluded in violation of internal constitutional procedures. The role of third-party mediation and its impact on the legal force of such treaties is also discussed. The article concludes that the implementation of the project without following internal constitutional procedures, such as the requirement to hold a national referendum, violates the constitutional norms of Armenia and international legal standards. Moreover, if it is a question of coercion or threat of use of force, the treaties may be declared invalid in accordance with Article 52 of the VCLT.*

Keywords: Constitution, international treaty, correlation, concept, contradiction, priority.

Research objectives:

1. To analyze the provisions of the VCLT (in particular, Articles 46 and 52) in the context of the nullity of treaties violating domestic constitutional procedures or concluded under duress.
2. To examine the constitutional provisions of the Republic of Armenia governing sovereignty and territorial changes.
3. To determine the admissibility of concluding international treaties on the change of territory on behalf of the State without national approval (referendum).

Research questions:

1. What legal grounds are provided by the VCLT for recognising an international treaty as null and void?
2. Can an international treaty on territorial change signed by the Prime Minister be legitimate without the approval of Parliament and referendum?

Scientific novelty:

For the first time, the study systematically examines the relationship between the norms of the VCLT and the national constitutional system of the Republic of Armenia in the context of the cession or change of territory using the example of the modern Armenian legal and geopolitical situation (including Zangezur Corridor project).

Research methods:

1) Dogmatic (formal legal) analysis of the norms of international and constitutional law;
2) A systematic approach – the study of the interrelationships between international treaty law and the national legal system;
3) Case analysis - analysis of the TRIPP Agreement and Zangezur Corridor project;

The results can be used:

1) in the legal assessment of the legitimacy of international treaties on territorial changes;
2) in the activities of government agencies when concluding international treaties;
3) in scientific research on public international law and constitutional law.

Preliminary remark: *This analysis presents our personal view on complex issues of international and constitutional law in the context of territorial changes and international treaties. At the same time, we are open to criticism and we understand that there are different legal positions and opinions of leading experts and lawyers on a number of aspects. The purpose of this study is to offer our reasoned vision of the problem based on current international law and judicial practice.*

Introduction.

In the legal practice of foreign countries, one can find various approaches to determining the role of international treaties and their impact on the formation and application of national legislation (including the Constitution). In this context, two main concepts of correlation have developed in the science of international law: *monism (with the primacy of international law)* and *dualism*.[1] Of course, there are also other concepts in the doctrine of international law, such as monism with the primacy of national law over international law,[2] moderate monism[3] and even nihilism (denial of international law, for example, in the doctrine of D'Amato).[4] Nevertheless, we will focus on the above two leading concepts.

Thus, monism assumes that international and national law constitute a single legal system in which international law can have direct effect in domestic law and the international law takes precedence over national laws. Dualism, on the other hand, considers international and domestic laws as two separate systems, and international law cannot operate within a national one without transformation, that is, implementation in the form of a national act (legislative acts (laws), ratification, etc.). These models are not absolute, and most States adhere to flexible approaches, and in practice the distinction between monism and dualism is often blurred.

In particular, many States establish in their Constitutions the recognition of ratified international treaties and fundamental norms and principles of international law as an integral part of the national legal system, but each State has its own individual approach to the relationship between the Constitution and international treaties. For example, an analysis of foreign practice shows that some states (for instance, the USA[5]) recognise the priority of its Constitution over international treaties, while others either adhere to the position of priority of international treaties over the Constitution (for instance, the Netherlands[6]), or follow a mixed approach (for example, Japan[7]). Still others (for instance, the United Kingdom) give direct priority only to the norms of customary international law, and international treaties must be ratified in order to become a part of national (domestic) law.[8]

Based on the above examples of the relationship between the Constitution and international treaties, we will try to understand which of them the Republic of Armenia adheres to. Thus, according to the Part

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[1] Starke, Joseph G., 'Monism and Dualism in the Theory of International Law', in Stanley L. Paulson (ed.), Normativity and Norms: Critical Perspectives on Kelsenian Themes (Oxford, 1999; online edn, Oxford Academic, 22 Mar. 2012), https://doi.org/10.1093/acprof:oso/9780198763154.003.0029, accessed 2 Sept. 2025.

[2] Bustamante, T. (2023). Monism in International Law. In: Sellers, M., Kirste, S. (eds) Encyclopedia of the Philosophy of Law and Social Philosophy. Springer, Dordrecht. https://doi.org/10.1007/978-94-007-6519-1_1116

[3] Francesco Francioni, From Utopia to Disenchantment: The Ill Fate of 'Moderate Monism' in the ICJ judgment on The Jurisdictional Immunities of the State, European Journal of International Law, Volume 23, Issue 4, November 2012, Pages 1125–1132, https://doi.org/10.1093/ejil/chs076

[4] D'Amato, Anthony, The Neo-Positivist Concept of International Law (1965). American Journal of International Law, Vol. 59, p. 321, 1965, Northwestern Public Law Research Paper No. 11-06, Available at SSRN: https://ssrn.com/abstract=1749649

[5] See the decisions of the U.S. Supreme Court in cases of *Whitney v. Robertson*, 124 U. S. 190 (1988) and *Reid v. Covert*, 354 U. S. 1 (1957).

[6] According to Article 91 of the Dutch Constitution, any provision of an international treaty that conflicts with the Constitution is subject to approval by a majority of at least two-thirds of the votes of the deputies of the States General (such a majority is required to amend the Constitution). Thus, treaties incorporated into the internal law of the kingdom prevail over internal law (including the Constitution) if their content can be binding on all persons. (See: Expression of Consent by States to Be Bound by a Treaty. Part II: Country Reports. Netherlands // Committee of Legal Advisers on Public International Law (CAHDI). Council of Europe. Strasbourg, 23 January 2001. P. 173.)

[7] The Japanese Government adheres to the approach that some treaties are subordinate to the Constitution, while others take precedence over the Constitution. (See: Yuji Iwasawa, The Relationship between International Law and National Law: Japanese Experiences // BYIL. 1993. N 197. P. 374.)

[8] Neff, Stephen C., 'United Kingdom', in Dinah Shelton (ed.), *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion* (Oxford, 2011; online edn, Oxford Academic, 19 Jan. 2012), https://doi.org/10.1093/acprof:oso/9780199694907.003.0026, accessed 2 Sept. 2025.

1 of the Article 5 of the Constitution of the Republic of Armenia: "*The Constitution has the highest legal force",*[9] and Part 3 of Article 5 stipulates that *"[i]f there are contradictions between the norms of ratified international treaties and laws, the norms of international treaties apply".*[10] As one can see, the Constitution of the Republic of Armenia establishes a clear rule of correlation between *"ratified international treaties"* and *"(national) laws"*.

There is no doubt that these norms, specified above, play a fundamental role in the process of building a state governed by the rule of law, since recognising the priority of norms and principles of international law means defining guidelines for the further development of the national legislation of the Republic of Armenia in the spirit of generally recognised international standards.

In order to determine what international treaties are, it is necessary to take into account the paragraph "a" of the Part 1 of the Article 2 of the VCLT. It is necessary to note that both Republic of Armenia and Azerbaijan are members of this Convention, which means that it is applicable to both states. Thus, according to the above-mentioned Article 2 of the VLCT: *"A "treaty" means an international agreement concluded between States in writing and governed by international law, regardless of whether such an agreement is contained in one document, in two or more related documents, and regardless of its specific name".*[11] In turn, the Part 1 of the Article 2 of the Act of the Republic of Armenia "On International Treaties" stipulates that: *"An international agreement is an agreement between the Republic of Armenia and another Contracting party(s), drawn up in writing in the form of one document or more than one interrelated and inseparable document and regulated by public international law, regardless of its name."*[12]

As one can see, the Article 2 of the VLCT mentions only that international treaties are those written agreements, regardless of their name (title) or the number of sheets of the document. Both the VCLT and the national legislation of the Republic of Armenia provide a clear and broad definition of what constitutes an international treaty. There are views in legal doctrine that distinguish between political and legal treaties. However, we do not support this distinction, as the aforementioned legal documents offer a comprehensive definition. According to these laws, any agreement (treaty) that meets certain criteria qualifies as an international agreement, regardless of its nature, whether it is an international contractual treaty ("treaty-contract") or an international legal act ("treaty-law").[13]

However, the following uncertainty arises: what norms should be followed if the norms of the Constitution of the Republic of Armenia ("Constitution") contradicts the norms of international treaties? Unfortunately, the Constitution of the Republic of Armenia itself does not contain a clear answer to this question, which in turn may create gaps in law enforcement practice. From the text of the Constitution of the Republic of Armenia, one can only understand that it is a normative legal act that has the highest legal force in the legal system of the Republic of Armenia. In turn, Article 27 of the VCLT stipulates that: *"A party may not invoke the provisions of its domestic law as justification for its failure to comply with the treaty"*.[14] That is, on the one hand, the Constitution of the Republic of Armenia has the highest legal force, but on the other hand, it follows from the meaning of the above article that in case of contradictions, the norms of international treaties take precedence over the provisions of the Constitution of the Republic of Armenia, since the Constitution of the Republic of Armenia itself is also part of the internal law of the Republic of Armenia and the norms of the Constitution also cannot be invoked to justify non-fulfillment of one's international obligations.

In addition, it is impossible to unequivocally answer the question, in what meaning exactly is the word "*law*" used in the Constitution of the Republic of Armenia? Thus, the Part 2 of the Article 5 of the Constitution stipulates that: *"Laws must comply with constitutional laws, and subordinate regulatory legal acts must comply with constitutional laws and laws"*. As one can see, in the text of the Part 2 of Article 5 of the Constitution of the Republic of Armenia, the concepts of *"law"* and *"subordinate*

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[9] The Constitution of the Republic of Armenia: https://www.irtek.am/views/act.aspx?tid=159650&sc=p1236#p1236
[10] Ibid.
[11] Vienna Convention on the Law of Treaties 1969. Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
[12] The Act of the Republic of Armenia "On International Treaties": https://www.arlis.am/hy/acts/120816
[13] Malanczuk, P. (1997). Akehurst's Modern Introduction to International Law (7th ed.). Routledge. https://doi.org/10.4324/9780203427712
[14] Vienna Convention on the Law of Treaties 1969. Done at Vienna on 23 May 1969. Entered into force on 27 January 1980. United Nations, Treaty Series, vol. 1155, p. 331. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

normative legal acts" are specifically mentioned, which allows us to assert that the concept of "law" is not used broadly (not as the whole set of laws and subordinate normative legal acts of the Republic of Armenia, i.e. "legislation"), but in a narrow sense (as a type of legislative act). If we turn to the Law (Act) of the Republic of Armenia on "Normative legal acts", we can see that the concept of *"law"* is not defined at all. The part 2 of Article 2 of the said Law only states that: *"a legislative act is a normative legal act adopted by the people of the Republic of Armenia or the National Assembly – the Constitution, constitutional laws and laws".*[15] As one can see, this article does not define the concept of "law", but it can be noted that the concepts of *"Constitution", "constitutional law"* and *"law"* are included in the concept of *"legislative acts"* and are indicated separately from each other. This means that the concept of *"Constitution"* is not considered in the context of the concept of *"law"*. In other words, it can be concluded that the concept of *"law"* should be understood as all those legislative acts that do not relate to either the Constitution or constitutional laws.

According to this logic, let us consider Part 3 of Article 5 of the Constitution of the Republic of Armenia, according to which: *"In the event of a conflict between the norms of international treaties ratified by the Republic of Armenia and* ***the laws of the Republic of Armenia****, the norms of international treaties apply"*. A similar provision is contained in the Part 3 of Article 3 of the Law of Republic of Armenia "On International Treaties".

If we consider the concept of "law" according to the logic of Part 2 of Article 5, it turns out that not only the question of the relationship between "international treaties" and "the Constitution" remains open, but also the question of the relationship between "international treaties" and "constitutional laws", especially since Part 2 of Article 15 of the Law of the Republic of Armenia on "Normative Legal Acts" states that: "*When expressing the same thought in a regulatory legal act, the same words, terms or phrases are used in a certain sequence*", and according to Part 4 of Article 15 of the said Law: *"If the same concept or term is repeated in the same normative legal act in different senses, the content of the concept or term that follows from the essence of this legal act or the principles of law governing this legal relationship is applied."*[16] But does the above suggest that in Part 3 of Article 5 of the Constitution, the concept of *"law"* is used in the meaning of *"legislative act"* or *"legislation"*? In our opinion, it is impossible to give a definite answer here.

At the same time, the Constitution stipulates that international treaties that contradict the Constitution can be ratified only after making appropriate amendments to the Constitution. According to the Constitution of Armenia, the National Assembly (Parliament) has the authority to approve (ratify) international treaties, and in certain cases, such as territorial changes, a referendum must be held. The Government (Prime Minister) can sign treaties on behalf of the State, but for their entry into force it is required to be approved by a referendum and ratified by Parliament (after receiving the decision of the Constitutional Court on the constitutionality of the international treaty). Thus, if an international treaty contradicts the Constitution, it cannot be ratified until appropriate amendments are made to the Constitution. This means that the decision on ratification is made by the Parliament after all constitutional contradictions are eliminated in accordance with the current legislation of the Republic of Armenia. However, the above-mentioned article of the Constitution does not explicitly state that the Constitution stands above international treaties, but rather defines the procedural issue of treaty ratification, which may contradict the Constitution. In other words, this norm does not mean that the Constitution has "absolute primacy" over international treaties, but rather represents a procedural mechanism for coordinating norms, rather than a hierarchy.

It should be noted that the above rule applies only to the case of ratification, but not signature. Signing an international treaty is only an expression of the political will of the State and a preliminary stage, while ratification is already a legally binding action that gives the treaty force within the state. Without ratification, the treaty is not binding in domestic law and cannot be applied or implemented as part of national legislation. Consequently, at the internal level, the treaty is not considered to have entered into force.

At the same time, from the point of view of international law, signing a treaty does not in itself oblige a State to comply with its provisions, except to refrain from actions that undermine the purpose and meaning of the treaty based on the principle of good faith *(pacta sunt servanda)*.[17] The obligations

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[15] The Law of the Republic of Armenia on "Normative Legal Acts": https://www.irtek.am/views/act.aspx?aid=150549

[16] Ibid

[17] See Article 18 of the Vienna Convention on the Law of Treaties (1969).

become complete and final precisely after ratification. And if the constitution or legislation stipulates that the ratification is carried out by Parliament, or if referendum is needed, then the lack of ratification or referendum means that the treaty has not been legally completed and is not binding on the State. Of course, a signing can provoke a political reaction in the international arena, but legally obligations arise only after its ratification.

But what should we do if an international treaty is signed or ratified in contradiction with the Constitution and this is revealed *post factum*? In this case, a complex legal situation arises in which the internal constitutional law and the international obligations of the State intersect. This situation raises a number of issues related to the legitimacy of an international obligation, the domestic legal order, and possible consequences for the State in the international arena. In this context, on the one hand, ratification in violation of constitutional procedures may be considered unconstitutional, that is, contrary to the basic law of the country. This may lead to the recognition of the ratification act as invalid within the State. In this case, the treaty is not binding in domestic law. But on the other hand, under international law, according to the Article 27 of the VCLT, a State is obliged to comply with its international obligations, even if they contradict domestic law, including the Constitution, except in cases provided for by the Convention (for example, Articles 46 and 52). Failure to fulfill obligations under a ratified treaty may lead to international liability, including diplomatic disputes, sanctions, or compensation claims. It turns out that the state finds itself in a legal impasse: it is obliged to comply with the treaty in the international arena, while the domestic legal order considers the treaty illegitimate.[18]

Of course, the role of the Constitutional Court of the Republic of Armenia (hereinafter referred to as the "Constitutional Court") in the process of preventing contradictions between the norms of international treaties and the Constitution should not be underestimated. In the context of constitutional democracy, the mechanism of preliminary constitutional control of international treaties affecting the foundations of State sovereignty is of particular importance. Indeed, the Constitutional Court should have not only the authority to verify the constitutionality of international agreements after their ratification, but also a real instrument of preliminary control, ensuring the inadmissibility of concluding agreements that contradict the Constitution. Thus, according to Part 1 of Article 74 of the Constitutional Law "On the Constitutional Court": *"Before the ratification of the international treaty by the National Assembly, the Government applies to the Constitutional Court on the issue of compliance with the Constitution of the obligations stipulated in it"*, and part 6 of art. 74, in turn, provides that: *"In the cases referred to in this Article, the Constitutional Court shall adopt one of the following rulings: 1) on the recognition of obligations stipulated in an international treaty as consistent with the Constitution; 2) on the recognition of obligations stipulated in an international treaty as fully or partially contrary to the Constitution."*[19] As we can see, the Constitutional Court ensures that the norms of the international treaty to be signed and ratified do not contradict the norms of the Constitution of the Republic of Armenia. Moreover, according to the Part 7 of the above-mentioned article, *"If an international treaty* ***significantly affects the sovereign rights of the Republic of Armenia,*** *the final part of the Constitutional Court's ruling must contain an appropriate indication of this."*[20]

However, it should be noted that in legal practice the possibility of nonconformities is not excluded even after the preliminary control of the Constitutional Court, and this circumstance can be shown in the following two examples. First, if, at the time of ratification of an international treaty, the Constitutional Court of the Republic of Armenia adopts a resolution (decision) recognising the obligations stipulated in such an international treaty as consistent with the Constitution of the Republic of Armenia, and some time after the ratification of such an international treaty, the Constitution of the Republic of Armenia is amended, resulting in a contradiction, which norms take precedence? Secondly, if the Constitutional Court adopts a resolution (decision) recognising the obligations stipulated in an international treaty as consistent with the Constitution of the Republic of Armenia, but an authoritative international body, after ratifying such an international treaty, officially interprets its provisions in such a

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[18] It should be noted that this is precisely the reason for Azerbaijan's demand to amend the Constitution of the Republic of Armenia in order to create a "smooth" basis for the implementation of its political intentions under the auspices of the "peace treaty" as part of the foreign policy efforts of the Donald Trump administration aimed at achieving a "peaceful breakthrough" in the region and strengthening the international image of the United States as a global mediator.

[19] Constitutional Law of the Republic of Armenia on the Constitutional Court. Available at: http://old.concourt.am/english/law_cc/index.htm

[20] Ibid

way that there is a contradiction with the norms of the Constitution of the Republic of Armenia, how should this conflict be resolved?

Moreover, there is also an institutional dilemma: What should be the legal reaction of the State if an executive authority (Prime Minister) ignores the procedure provided for by the Constitution or the law for applying to the Constitutional Court before signing an international treaty? This situation creates a risk of undermining the supremacy of the Constitution and the principle of separation of powers, since the executive branch actually replaces the function of constitutional control. In this case, the legal sanction of invalidity can be applied - a contract signed in violation of the mandatory mechanism of preliminary (constitutional) control is considered null and void *ex constitutione* and cannot generate legal consequences in the internal legal order.

In addition, there may also be a risk of institutional liability. In particular, ignoring the procedure of constitutional control can be considered as exceeding the powers of the executive authority *(ultra vires),* which entails a mechanism of political or legal responsibility (for example, parliamentary control, impeachment, constitutional tort). Thus, the inclusion of mandatory preliminary constitutional control in the procedure for concluding international treaties, especially those affecting issues of sovereign rights of the State, requires not only regulatory consolidation, but also effective guarantees of its observance, including the consequences for acts committed in violation of this procedure. It should be noted that this issue requires more in-depth research.

1. The priority of international treaties over the constitutions of States: the legal nature and limits of application

According to the circumstances of the case of *Hirst v. the United Kingdom,*[21] the British legislation at the constitutional level restricted the suffrage of persons who had committed a crime. The applicant, serving a life sentence in prison, claimed that there had been a violation of Article 3 of Protocol No. 1 to the European Convention on Human Rights. The British authorities, in turn, argued that at the constitutional level the disenfranchisement of persons who have committed a crime is aimed at preventing the commission of new crimes and punishing prisoners. *"The Government argued that the disqualification in this case pursued the intertwined legitimate aims of preventing crime and punishing offenders and enhancing civic responsibility and respect for the rule of law by depriving those who had breached the basic rules of society of the right to have a say in the way such rules were made for the duration of their sentence. Convicted prisoners had breached the social contract and so could be regarded as (temporarily) forfeiting the right to take part in the government of the country. The Council of Europe recommendation concerning the management of life prisoners relied on by the AIRE Centre in its intervention was not binding and made no reference to voting and in any event the legislation was not incompatible with its principles."*[22]

As a result, the ECtHR decided the case in favor of the applicant, finding that even if the discretion of the State is wide, it cannot be absolute. The restriction of the right to vote of persons who have committed a crime deprives a significant number of convicted persons of the right to vote guaranteed by the European Convention. This provision establishes an absolute prohibition on the right to vote in relation to all convicted persons. It is automatically applied to such prisoners, regardless of the length of their sentence and the severity or nature of the crime they committed, as well as their personality characteristics. Such a general restriction of an extremely important right enshrined in the Convention should be considered as not falling within the scope of permissible freedom of action of the State, no matter how broad it may be, and, accordingly, incompatible with Article 3 of Protocol No. 1 to the Convention.

The Court also held that the United Kingdom is not the only state among the parties to the Convention that deprives all its prisoners of voting rights. And since the judicial practice of the ECtHR forms European standards for the protection of human rights, all those member States of the Council of Europe that have established an automatic ban on the exercise of the right to vote by prisoners in their legislation will be forced to review their legislation.

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[21] ECtHR judgement of 6 October 2005 *Hirst v. the United Kingdom* (Application no. 74025/01): http://base.garant.ru/55093963/

[22] Ibid. Para 50.

A similar conclusion was reached in the case of *Anchugov and Gladkov v. Russia*[23], where the Court found that the norm of Part 3 of Article 32 of the Constitution of the Russian Federation prohibiting convicts from exercising their voting rights violates the European Convention on Human Rights. Thus, the Russian Federation pointed to the fact that the Constitution of the Russian Federation has the highest legal force on the territory of the Russian Federation and has priority over the norms of international treaties, and the ECtHR does not have the competence to review the norms of the Constitution of the Russian Federation for their compliance with the European Convention.

The Court held that by joining this Convention, the Russian Federation assumed the obligation to ensure that everyone has the appropriate rights and freedoms within its jurisdiction, and also recognised the competence of the ECtHR to assess Russia's compliance with this obligation. As the Court rightly ruled that this case is not about checking the Constitution of the Russian Federation for compliance with the European Convention, but about a specific violation of the applicants' rights guaranteed by Article 3 of Protocol No. 1 to the specified Convention. In other words, it can be argued that in these cases, the ECHR essentially establishes the priority of the norms of an international treaty (in this case, the European Convention) over the norms of national legislation, including the Constitution.

In the case of *Markin v. Russia,*[24] the ECtHR found much in common with the case of *Hirst v. the United Kingdom*. When considering this case, the Court pointed out that all convicts serving sentences in places of deprivation of liberty are deprived of the right to vote, regardless of the length of the sentence, the circumstances of the commission of crimes, as well as their severity. Of course, the Court took into account the Russian authorities' explanations that the purpose of such a restriction was to promote respect for a democratic regime and the rule of law, but at the same time the Court held that such a policy by the Russian authorities could not be considered proportionate. The Court motivated its position by the fact that even if the Russian courts take into account the factual circumstances of the case, the severity of the crime, as well as the identity of the defendant, this does not mean that they also take into account the fact that the punishment imposed by them will entail the deprivation of the convicted person's voting rights. The Court also ruled that with regard to all the norms of the legislation of the member States of the Council of Europe, without exception, the Court can exercise convention control, ruling that the Russian authorities violated the applicants' right to vote provided for in Article 3 of Protocol No. 1 to the European Convention.

As we can see, the ECtHR in the cases we have reviewed adheres to the priority of international treaties over the constitutions of the member states of the Council of Europe. Of course, this position of the ECtHR does not suit the governments of states, and this attitude can be understood, since they consider their constitutions as the guarantors of their sovereignty, and they perceive recognition of the priority of international treaties as a threat to their sovereignty.

However, it seems to us that although such fears are not unfounded, nevertheless, each State decides for itself which international treaties to join and which not to join, and, therefore, is aware of the significance of its actions and legal consequences of such a treaty. For example, when the United Kingdom and the Russian Federation, dissatisfied with the above-mentioned decisions of the ECtHR, joined the European Convention, they realised the importance of such accession and, of course, assumed that in many cases the judgments of the ECtHR could run counter to their national legislation (including the Constitution). This is where the sovereignty of the State manifests itself, and an international treaty does not threaten the sovereignty of States in any way, but is a product of their free will. Of course, there are scholars who consider the concepts of international law and sovereignty as inappropriate or even clearly antagonistic. However, at the same time, we must not forget that international law appeared in order to effectively regulate the relations of sovereign states among themselves (the Peace Treaty of Westphalia in 1648). As rightly noted by R. Anand: “Sovereignty creates international law, and this law recognizes sovereignty as its foundation and fundamental principle”[25].

In the science of international law, there is also an opinion that any international treaty restricts the sovereignty of a State.[26] It seems to us that this is not the case, if it complies with the constitutional law of the parties. Proponents of this position view sovereignty as the unlimited freedom of action of

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[23] ECtHR judgement of 4 July 2013 *Anchugov and Gladkov v. Russia* (Applications nos. 11157/04 and 15162/05) Эл. ресурс: http://swarb.co.uk/anchugov-and-gladkov-v-russia-echr-4-jul-2013/

[24] ECtHR Judgement of 22 March 2012 *Konstantin Markin v. Russia* (application no. 30078/06)

[25] Anand R. International Law and the Developing Countries. N. Delhi, 1986. P. 78.

[26] *See* Talalaev A.N. Legal Nature of International Treaty. Moscow, 1963, P. 67; See also Levin D.B. Basics Issues of Contemporary International Law. Moscow, 1958, P. 207; *See also* Velyaminov G.M. Legal Status of the Subjects of Russian Federation and Problems of Recognition. Moscow Journal of International Law, 1995, #2, P. 9.

States, that is, it is not sovereignty that is limited, but the freedom of action of the state. The sovereignty of one State is always limited by the sovereignty of another State. In this context, the opinion of US Deputy Secretary of State S. Talbott is interesting that: "*(opponents of the expansion of US international obligations note – my italics)* that this weakens our sovereignty. In fact, the opposite is true. Well-developed international commitments and a comprehensive strategy of international engagement expand, rather than limit, our power over our own destiny, the fate of the state".[27]

In our opinion, the approach of the ECtHR in the cases we are considering can be justified, since if a State recognizes the binding nature of the provisions of an international treaty (in this case, the ECHR), then by virtue of Article 27 of the VCLT, if the norms of an international treaty and the norms of the Constitution contradict, the State must fulfill its international obligation even then when it is necessary to amend the Constitution in order to implement it. At the same time, the role of the Constitution as a normative legal act having the highest legal force in the legal system of the Republic of Armenia is not at all diminished, but on the contrary, it acquires the role of a connecting link between the international treaties of the Republic of Armenia and national legislation. As noted above, when signing and ratifying an international treaty, the State is aware of the seriousness of its legal consequences and justifying the violation of the *pacta sunt servanda* principle by saying that the norms of an international treaty run counter to the norms of the Constitution should not be allowed, as this would jeopardise the effectiveness and stability of international relations, unless other exceptions specified in the VCLT are applicable.

Moreover, the priority of the European Convention over the Constitution can also be understood in the broader context of the international protection of human rights. The Convention was designed to establish minimum universal (European) standards for the protection of individual rights and freedoms, ensuring that no State can arbitrarily limit or violate human rights under the pretext of domestic constitutional provisions. In this context, the Convention serves as a safeguard against the abuse of sovereign power, and the obligation to comply with it justifiably takes precedence over conflicting national norms (including the Constitution). This approach reflects a fundamental principle of modern international law: human rights obligations are not merely political commitments but binding legal duties, and their effective implementation must be ensured even at the constitutional level.

In addition, we would like to recall the words of Hans Kelsen: "The state is considered only as a legal phenomenon, as a legal entity, that is, a corporation".[28] Under the concept of "corporation", the scholar considered "a group of individuals to whom the law refers as a single object, as a person who has rights and duties that differ from the rights and duties of individuals who make up a corporation."[29] H. Kelsen considers the issue of the relationship between the international legal order and national legal systems as the ratio of national legal order and internal norms corporations.[30] Indeed, if one draw parallels between the constitution of the state and the charter of the corporation, one can see a lot in common between them. For example, just as a State enacts laws in accordance with its Constitution, a corporation enacts its internal acts in accordance with its charter. When a corporation enters into legal relations with other corporations, their relations are regulated by national legislation, and not by the charter of each of them, otherwise each corporation may refer to its charter to fulfill its obligations, which will negate the effectiveness and stability of such legal relations and the credibility of national law, except for the *ultra vires* cases. The same can be said in the case of the constitution of States and international treaties. It should be noted that the CJEU also adheres to the position of recognising the priority of the norms of international (integration, supranational) law over the Constitution. Thus, in the *Internationale Handelsgesellschaft* case, the CJEU explicitly recognized the priority of EU law over the norms of national constitutions (including norms guaranteeing fundamental rights), even if we are talking about *sui generis* integration law, not international law.[31] However, we also recognise that the priority of international agreements over the Constitution should not be absolute. Although there is a principle of *pacta sunt servanda,* the primacy of an international treaty should also have certain exceptions, which we will discuss in more detail in the next chapter.

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[27] Talbott S., Globalization and Diplomacy: A Practitioner's Perspective. Foreign Policy. 1997. Fall. P. 82.
[28] Kelsen, H. (1945). General Theory of Law and State (Translated from German by A. Wedberg, 1945) P. 96
[29] Ibid.
[30] Ibid.
[31] ECJ. Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle fur Getreide und Futtermittel. Case N 11 - 70. Judgment of 17 December 1970. § 3

2. Constitutional restrictions and international treaties: grounds for invalidity in the light of Articles 46 and 52 of the VCLT

In the legal reality of the Republic of Armenia, the issue of the legitimacy of international treaties providing for the cession of territory (i.e., the incident of territorial changes related to the villages of Voskepar or Kirants) has recently become particularly relevant in the light of the provisions of the VCLT (1969), in particular articles 46 and 52 of the VCLT.[32]

Thus, Article 46 establishes that a State may invoke a violation of an internal law of fundamental importance concerning the competence to conclude a contract if such a violation is manifest. At the same time, Article 52 provides for the invalidity of a treaty concluded under threat or use of force violating the principles of the UN Charter. In this context, article 46 of the Vienna Convention on the Law of Treaties provides as follows: "*1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.***"**

That is, in this case, the international document (the VLCT) itself recognises such a non-absolute primacy of international law over the Constitution, but provides for certain justified exceptions. But how can one understand in practice that the violation *"was manifest"* and *"did not concern a norm of domestic law of particular importance"*?

Of course, the VLCT itself provides certain guidelines about *"manifest"*, although even here there are problems of law enforcement, because how and on the basis of what the criteria of *"objectively evident to any State"* be assessed, and how to understand *"normal practice",* if the process of signing treaties and the process of their ratification can be different for each State? Moreover, is it possible to assert that "*a rule of its internal law of fundamental importance*" is any norm of the Constitution? Or are these just certain norms of the Constitution? Or, in general, any norm of domestic law that, based on certain criteria, has a *"fundamental importance"*? And how to define these norms?

As one can see, such questions do not have an unambiguous answer, while Article 46 of the convention provides that only a violation of just such a rule can become the basis for challenging the validity of a State's consent to a treaty. The Convention itself does not contain a list of such norms, which means that interpretation remains at the discretion of States or international judicial authorities. At the same time, by virtue of the VCLT, the validity of a treaty or the consent of a State to be bound by a treaty may be challenged only on the basis of the application of the VCLT. In this regard, we consider the issue of the validity of international treaties exclusively through the prism of the VCLT.

If we proceed from the constitutional-legal (formal) approach, then in the hierarchy of sources of law, any norm of the Constitution has *a priori* a *"fundamental importance"*, due to the fact that the Constitution is a normative legal act of special importance within the internal law of any state (including Armenia). In this approach, the significance of a norm is determined not by its content, but by its position in the legal system.

However, despite the logic of this approach, an important essential aspect is not taken into account: not every norm of the Constitution is critically important for the legal order (for example, the norms governing the schedule of elections are not always vital for the state), namely certain constitutional and legal norms. It is possible to define particularly important norms based on their content, rather than their place in the hierarchy and on the basis of certain criteria. In particular, such criteria can be, for example, the norms of the Constitution, which protect sovereignty or from which the protection of territorial integrity follows; the norms of the Constitution, which relate to fundamental human rights and freedoms; or the norms of the Constitution, which determine the constitutional identity of the state (e.g., the form of government, language, foundations of State power).

At the same time, in order to determine the status of a *"fundamental importance"* in this context, it is necessary to answer the question: could a violation of this norm of the Constitution lead to undermining the legitimacy of the state or the legal order as a whole? If the answer is yes, then the norm has a such a meaning.

In our opinion, the most reasonable approach from the point of view of law enforcement is precisely the mixed approach, when it is initially assumed that the norm of the Constitution is already *a priori* important due to its status, but then the content and significance of the norms for the legal order are

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[32] For example, see: https://iclaw.am/upload/publication-documents/680f84a5b5e13.pdf

analysed, although Article 46 of the VCLT is rarely used in the practice of international courts. If an international treaty violates these core elements, its application is impossible without changing the Constitution.

In view of the above, in the Republic of Armenia, the norms of domestic law of particular importance should include those relating to sovereignty, territorial integrity of the foundations of power, the people as a source of power, the constitutional order, the principles of democracy, the rule of law, the separation of powers and so on. Thus, if an international treaty violates or comes into clear conflict with these norms, this may become the basis for the application of Article 46 of the VCLT. For example, the transfer of territory by a State is an issue of exceptional importance, affecting the foundations of its sovereignty and territorial integrity. In international practice and in the constitutional law of most States, such issues are not attributed to the competence of the executive, but rather to the people's power (referendum).

According to the international legal approach and practice, the delimitation and demarcation of the state border, as well as the transfer (renunciation) of part of the territory or the modification of the territory, is an action affecting the sovereignty of the State. Such a decision cannot be taken unilaterally by the executive branch, in particular, the Prime Minister, without the appropriate approval of Parliament and the people (through a referendum). Such provisions relate to the norms of domestic law of particular importance in the sense of Article 46 of the VCLT.

In addition, the Constitution of the Republic of Armenia itself does not directly define the procedure for changing territories, but it follows from the interpretation of other fundamental constitutional norms. For example, from the norm of Article 6 of the Constitution, which states that the procedure for concluding international treaties is provided for by law. It is fundamental, because it is connected with the possibility of the state to enter into legal relations with other countries, which, according to the Montevideo Convention, is one of the four elements of sovereignty.

Of course, the Constitution does not specify the law directly, but it implies the Law of the Republic of Armenia on international treaties and the legislative act on referendums, where only the people can decide the fate of the territory of the state by referendum. That is, neither the Prime Minister nor the Government has the right to change a territory or recognize someone else's jurisdiction over a part of it without an appropriate internal constitutional mechanism, namely a referendum.

By virtue of the Constitution itself, state bodies and officials have the right to perform only those actions for which they are authorised by law. That is, the Prime Minister is not an absolute monarch, but a representative of the parliamentary republic. The Prime Minister's approach, echoing Louis XIV's famous phrase "*L'État, c'est moi*" ("I am the state"),[33] while expressing a strong centralisation of power, does not have any legal foundation in modern democratic systems in general, and in the Republic of Armenia, in particular. Although such a statement may reflect the desire for power centralisation, in reality, the political structure of any modern democratic state (including the Republic of Armenia) is based on certain constitutional principles, such as separation of powers, sovereignty of the state, and the right of citizens to participate in decision-making. In legal terms, such statements, like "*L'État, c'est moi*" ("I am the state"), cannot justify actions that violate the law or the Constitution of the Republic of Armenia. In democratic countries, the head of the executive branch (the Prime Minister in this case) operates within constitutional norms and is bound by the principles of separation of powers. Even though the Prime Minister may wield significant power within the government, they are not a "sovereign" figure in a legal sense.

In addition, from the point of view of *jusnaturalism*, the Constitution acts as a social contract between the people and the state, formalising the framework of authority for government bodies and defining the relationship between state structures and citizens.[34] At the same time, this framework is not absolute: the most significant issues should be directly addressed by the people through a referendum, reflecting the principle of popular sovereignty and providing a mechanism for democratic control over government power. This is emphasized even in Armenian legislation at the level of the Constitution itself and constitutional laws. This approach combines the ideas of the classical social contract proposed by

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[33] Bély, L. (2005). Louis XIV: le plus grand roi du monde. Les classiques Gisserot de l'histoire (in French). Éditions Jean-paul Gisserot. p. 279. ISBN 287747772X. Bely2005.

[34] Lermack, P. (2007) "The Constitution Is the Social Contract So It Must Be a Contract ... Right? A Critique of Originalism as Interpretive Method," William Mitchell Law Review: Vol. 33: Iss. 4, Article 1. Available at: http://open.mitchellhamline.edu/wmlr/vol33/iss4/1

Jean-Jacques Rousseau with modern constitutional and legal concepts of the balance between representative and direct democracy.[35]

Thus, any treaty on the transfer of sovereign territory signed by the Prime Minister outside of constitutional procedures (for example, in violation of the laws of the Republic of Armenia on international treaties and referendums) is legally null and void from the point of view of domestic law of the Republic of Armenia, and there are grounds to invalidate them under international law. So, the transfer of a part of the territory or a change in the territory (even a change in its status) without the approval of the people by referendum, falls under both exceptions of Article 46 of the VCLT. Firstly, in our opinion, this is a *"manifest"* violation (any international act related to border/territorial changes must be approved in a constitutional form - with the approval of the people in a referendum, as required by domestic law). Secondly, it concerns fundamental constitutional norms, namely territorial integrity, sovereignty and the expression of the will of the people. Consequently, if the Prime Minister has signed an international treaty containing a direct or indirect renunciation of a part of the territory or a change in the territory (even its legal status), while violating constitutional and legal procedures, such consent is subject to invalidation by virtue of Article 46 of the VCLT.

Moreover, according to the general principles of international law (including the UN Charter), the sovereignty and territorial integrity of states are inviolable, and border changes are possible only if the principle of free and informed consent is respected and expressed in accordance with constitutional procedures. At the same time, in the ICJ case, the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia, 1997)*,[36] the Hungarian side tried to invoke domestic environmental laws to invalidate the treaty. But the Court held that domestic law usually cannot be the basis, except for in cases directly falling under Article 46 of the VCLT (and even there, "evidence" is needed). This, in turn, narrows the application of the norm, but this does not mean that it makes the specified norm practically unsuitable for cases involving territorial changes.

The criterion of "clearness" in Article 46 of the Convention is interpreted strictly, namely, the violation must be so obvious that any State reasonably realized such a violation. Of course, if the Prime Minister has signed the treaty, the international partner can proceed from the presumption of authority (*"doctrine of apparent authority"*). But we believe that this is an insufficient basis and such a presumption is not irrefutable.

First, any State will be able to distinguish an absolute monarchy with the absolute power of the monarch from the power of the prime minister in a parliamentary republic. And the good faith of the State can be seen precisely in how well it conducts due diligence of its partner State when signing an international agreement. Secondly, in our opinion, when signing the treaties concerning the territory of Armenia, Azerbaijan should have initially understood this, especially given its republican form of government. For example, the Constitution of Azerbaijan contains a provision that emphasizes the importance of a referendum in changing the territory. How can a State not know about this when signing international treaties on territorial changes? In particular, Article 11 of the Constitution of Azerbaijan stipulates that:

"I. The territory of the Republic of Azerbaijan is united, inviolable and indivisible.

II. Internal waters of the Republic of Azerbaijan, sector of the Caspian Sea (lake) belonging to the Republic of Azerbaijan, air space over the Republic of Azerbaijan are integral parts of the territory of the Republic of Azerbaijan.

III. No part of territory of the Republic of Azerbaijan may be estranged. The Republic of Azerbaijan shall not yield any part of its territory, in any form, to anybody; state borders of the Republic of Azerbaijan may be altered only in accordance with the will of its people by means of a referendum held by Milli Majlis of the Republic of Azerbaijan."[37]

As one can see, if the Constitution of Azerbaijan itself explicitly requires a referendum for any change of its territory (Article 11), it means that Azerbaijan, upon entering into international relations

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[35] Zack, N. (2023). "The social contract: consent of those governed", Democracy: A Very Short Introduction, Very Short Introductions (Oxford, 2023; online edn, Oxford Academic, 28 Sept. 2023), https://doi.org/10.1093/actrade/9780192845061.003.000, accessed 23 Sept. 2025.

[36] Gabcikovo-Nagumaros Project (Hung. v. Slovk.), 1997 I.C.J. 7 (Sept. 25)

[37] Constitution of the Republic of Azerbaijan (as amended in 2016), 12 November 1995, https://www.refworld.org/legal/legislation/natlegbod/1995/en/76709 [accessed 23 September 2025]

with Armenia, is aware and should have initially realised the importance and sensitivity of territorial issues for Armenia. Thus, Azerbaijan recognises by its constitutional norm that the executive authorities cannot make decisions on border changes alone. Therefore, Azerbaijan cannot honestly claim that it was unaware of the possible limitations of the Armenian Prime Minister's powers when signing a similar agreement on behalf of Armenia, and should have taken due diligence before signing the agreement, especially in the conditions when Azerbaijan is also a republic.

Although in international law, the Vienna Convention (Articles 7 and 46), the head of State, Government and Minister of Foreign Affairs *ex officio* have a common presumption of authority to conclude treaties, rather than being representatives by proxy, but even in this case, the powers are limited by domestic law (for example, the cession of territory is a question that must be decided by referendum). If they go beyond the competence, the treaty should not bind the state (analogous to the "contract beyond authority"). Of course, Article 47 of the VCLT stipulates that: *"If the authority of a representative to express the consent of a State to be bound by a particular treaty has been made subject to a specific restriction, his omission to observe that restriction may not be invoked as invalidating the consent expressed by him,* ***unless the restriction was notified to the other negotiating States prior to his expressing such consent.****"*

However, in our opinion, the norm does not explicitly says that the representative should notify by himself/herself, but used *"was notified"*. Besides, this norm should be interpreted in a systemic relationship with Article 46 of the Convention. It protects the integrity of the parties within the framework of normal procedures, but does not eliminate the consequences of violations of fundamental norms if the latter fall within the scope of article 46. Thus, priority should be given to Article 46 as a norm protecting the sovereignty of the state and the foundations of the constitutional order of the Republic of Armenia. Moreover, even if the parties have not been formally notified of the limitation of the representative's powers, the application of Article 47 is not absolute. The principle of good faith *(bona fide)*, enshrined in Article 26 VLCT, requires that all contractual relations be based on honesty and awareness of possible legal restrictions by the parties. If the other side knew or should have known about the constitutional limitations of the signatory's powers, which in our opinion may be the fact that the Constitution of Azerbaijan itself decides on territorial changes through a referendum, then its subsequent behavior may be considered an abuse of rights or an attempt to use legal fiction to the detriment of the sovereignty of the other side. In international practice, this can be qualified as estoppel, a prohibition on invoking formal provisions (for example, Article 47) if the party itself behaved contrary to good faith and fairness.

Of course, in private law, a "third party" can usually also invoke the presumption of a power of attorney (if he had no reason to doubt it). In international law, a partner state can argue that they had the right to rely on the words of the Prime Minister as head of government. But if we are talking about such a fundamental norm as territorial integrity, then it is considered that the abuse of authority by the Prime Minister is obvious and the partner cannot hide behind good faith, especially if his Constitution also recognises the importance of resolving territorial issues through a referendum. Thus, the cession of territory by the Prime Minister without authority should be considered as an *ultra vires* treaty that does not create obligations until it is approved by a referendum under the Law of the Republic of Armenia on referendums.

A special category of invalid treaties is associated with the conclusion of treaties under duress. The Munich Agreement of 1938, under which Czechoslovakia ceded the Sudetenland to Germany under threat of war, can serve as a classic example of a treaty that is void under the prism of the Article 52 of the VCLT. The international community officially declared it invalid already in 1942.[38] Similar situations occur in the Soviet-Finnish Treaty of 1940[39] and the Treaty of 1895 between China and Japan,[40] where the cession of territories took place under the threat of force. Of course, these events were before the VCLT adoption, but today in similar cases, the invalidity of the treaty is fixed automatically and does not depend on ratification or subsequent approval by State authorities, which fundamentally distinguishes Article 52 from Article 46. Thus, the analysis of these cases allows us to identify two areas:

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[38] Kuklík, J. (2015). Czech Law in Historical Contexts. Charles University in Prague, Karolinum Press. ISBN 9788024628608. Retrieved 20 July 2019 – via Google Books.

[39] First published in English as Finland – Union of Soviet Socialist Republics. Treaty of Peace. Signed at Moscow, 12 March 1940; ratifications exchanged, 21 March 1940. The American Journal of International Law 34 (3), Supplement: Official Documents. (July 1940), pp.127–131.

[40] Peace treaty concluded between Japan and China (Treaty of Shimonoseki).

1) firstly, treaties concluded by state authorities without the necessary internal competence can be challenged under Article 46 if the violation is obvious and concerns fundamental issues;

2) secondly, treaties concluded under threat or use of force are already initially void under Article 52 and they do not require subsequent confirmation.

The practical importance of distinguishing between these categories is especially evident when assessing the legitimacy of treaties on territorial concessions or territorial changes, since international law recognizes fundamental limitations on the competence of State authorities and prohibits coercion by force as a factor generating absolute invalidity.

Moreover, if the other side provoked a war or used aggression or force (even a threat), and in these circumstances the Prime Minister signed an agreement on the cession of territory, then the situation goes far beyond Article 46 of the VCLT *(invalidity due to lack of authority)* and falls under Article 52 of the VCLT *(coercion to conclude an agreement by force)*: *"A treaty is null and void if its conclusion was achieved through the threat or use of force in violation of the principles of international law enshrined in the UN Charter."* If a State is forced to sign a cession of territory under threat of military force or aggression, then such an agreement is void *ab initio* (from the very beginning). For example, in the case of the Munich Agreement of 1938 (Czechoslovakia – Germany, Italy, France, Great Britain), Czechoslovakia was actually forced to cede the Sudetenland under threat of war. The international community later declared the agreement null and void, as the agreement was concluded under threat of aggression. Another example is the Soviet-Finnish agreement after the Winter War (1940), where Finland ceded part of Karelia after the Soviet aggression. In particular, Finland has never considered this treaty to be voluntary, and in the doctrine it is referred to as treaty imposed by force. In the case of the Simone Treaty of 1895, Chinese lawyers consider the cession of Taiwan by China after the war with Japan to be an unequal treaty imposed by force, and therefore null and void by modern standards (although there was no Article 52 in the 19th century).

Of course, some nineteenth- and early twentieth-century lawyers would say: "treaties, even those imposed by war, are valid" *(doctrine of debellatio)*.[41] In classical law, it was believed that the strong could force the weak to cede territory, and this was recognized as a fact. But we live in the era of modern international law, and we cannot rely on the motto *"everything is decided by force"*, otherwise the Peace Treaty of Westphalia, the League of Nations and the UN Charter lose their meaning. After all, it was only after the Second World War and the UN Charter that the prohibition of use of force and coercion by force as a *jus cogens* was recognised.[42]

Thus, if the Prime Minister signs the cession of territory without authority and in violation of constitutional and legal procedures, then this is a violation of Article 46 (can be challenged as *ultra vires*). Moreover, if the Prime Minister signs a cession of territory under threat of war or aggression, then by virtue of Article 52 of the VCLT, the treaty is *ipso jure* void, automatically and definitively, without any reservations.

However, the application of Article 52 requires a high standard of evidence, and although there are signs of pressure in public rhetoric, the legal assessment will depend on the totality of circumstances showing the presence of aggression or threat of use of force from Azerbaijan. In this regard, credible grounds for such an assessment may exist. Notably, prior to its push for the so-called “Zangezour Corridor”, Azerbaijan engaged in actions that can be characterised as an “ethnic cleansing” of the Armenian population of Nagorno-Karabakh (Artsakh). This campaign, which included the use of military force, coercive displacement, and systematic targeting of civilian populations, may be considered as part of a broader pattern indicative of aggressive intent. Therefore, while the legal threshold for invoking Article 52 is undoubtedly high, the historical and geopolitical context, including the recent ethnic cleansing in Nagorno-Karabakh (Artsakh), provides substantial grounds to argue that Azerbaijan's actions constitute a threat or use of force. This cumulative assessment must be considered carefully in any legal or diplomatic strategy moving forward. This context is crucial in understanding the intent and trajectory behind Azerbaijan’s current demands.

Furthermore, Azerbaijan’s ongoing insistence on establishing a corridor through sovereign Armenian territory accompanied by implicit or explicit threats of military action raises serious concerns

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[41] Benvenisti, E. (2012). The International Law of Occupation. Oxford University Press. p. 161. ISBN 978-0-19-958889-3

[42] Pobjie E. (2024). The Relationship between the Customary Prohibition of the Use of Force and Article 2(4) of the UN Charter. In: Prohibited Force: The Meaning of ‘Use of Force’ in International Law. Cambridge University Press; 2024:59-80.

under Article 2(4) of the UN Charter, which prohibits the threat or use of force against the territorial integrity or political independence of any state. It is important to note that even if past UN General Assembly or Security Council resolutions have characterized Armenia's presence in Nagorno-Karabakh as an "occupation", this does not negate or justify the use of force or coercion by Azerbaijan in the present context. Those resolutions, largely political in nature, do not provide *carte blanche* for military aggression or territorial demands outside the framework of international law. The legal principle of *ex injuria jus non oritur* (law does not arise from injustice) applies: one alleged violation does not legitimize another.

Moreover, even in the absence of a formal finding of aggression by the Security Council or General Assembly, a legal assessment under Article 52 and related norms can proceed independently. International law permits states and competent legal bodies to assess facts and determine violations based on objective criteria, not merely political declarations or omissions at the UN level.

In sum, the cumulative conduct of Azerbaijan, ranging from the ethnic cleansing of Nagorno-Karabakh to coercive territorial demands on Armenia, may well satisfy the evidentiary standard for recognizing a threat or use of force. This could, in turn, trigger the legal consequences provided for under Articles 51 and 52 of the UN Charter, including the right to self-defense and the invocation of regional security arrangements.

3. Mediation by third States and criteria for the application of Article 52 of the VCLT: the case of the USA's participation and the Zangezur Corridor

The Zangezur Corridor is a project of a transport route through the south of Armenia (Syunik region) connecting Azerbaijan with Nakhichevan (an enclave of Azerbaijan).[43] It presupposes either the special status of this corridor (for example, extraterritoriality, foreign-controlled transit, the presence of foreign border guards), or - according to more critical versions - the actual transfer of control over the territory.[44] However, as we have already noted above, the norms of the Constitution are clearly *"norms of particular importance"*. Transfer of territory (or the actual removal of the State from control over a certain part of its territory) without the approval of Parliament and the people by referendum in accordance with the internal constitutional procedure, it is a violation of internal law, and, moreover, it can even be considered as *"manifest"*.

At the same time, the Constitution of the Republic of Armenia itself does not allow any mechanisms for providing extraterritorial "corridors" outside the control of Armenia, without changing the Constitution itself. By virtue of the law on referendums, any cession, transfer or loss of control over a part of the territory (including any "special regime corridor") requires the approval of the people (referendum), otherwise the treaty is *ultra vires*. Therefore, if the Prime Minister or another official of Armenia signs an agreement on the "corridor" that violates these norms, this can be considered a direct basis for challenging its validity under the Article 46 of the VCLT. The Zangezur corridor in its "extraterritorial" or "foreign-controlled" form is not just a transport treaty, but it can be considered as a potential cession of control of part of the sovereign territory of the Republic of Armenia, without due constitutional procedure, even if the borders of the territory do not change, but only some aspect of control over the territory changes. And this can be challenged under Article 46, if there is no proper internal approval (referendum of the people). Moreover, this may be absolutely negligible under Article 52, if it can be proven that this happened under threat of force from Azerbaijan, which requires further in-depth investigation.

It should be noted that on August 8, 2025, a joint statement was signed in Washington by the President of Azerbaijan and the Prime Minister of Armenia, providing for the creation of an "unhindered communication" between the main territory of Azerbaijan and the Nakhichevan Autonomous Republic through the territory of the Republic of Armenia, within the framework of the Trump Route for International Peace and Prosperity (TRIPP) project.[45] In our opinion, this is essentially the step to implementation of the Zangezur Corridor project. We are inclined to believe that, despite the wording that

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[43] "The Meghri Corridor: A Viable Transport Link or Geopolitical Noose?". 22 March 2021. Archived from the original on 5 November 2021. Retrieved 17 October 2021.

[44] Armenia to cede control of Zangezur Corridor to US: Report Control of the strategic corridor would give the US a military foothold on Iran's border. Available at: https://thecradle.co/articles-id/32154

[45] Trump's Road TRIPP Delivers a Deal, Available at: https://cepa.org/article/trumps-road-tripp-delivers-a-peace-deal/

does not contain the term "corridor", from the point of view of international and constitutional law, this initiative creates an actual change in the status of the territory of Armenia, which has legal consequences, including the need to hold a referendum in accordance with the current legislation of the Republic of Armenia. In particular, “easements” ot “transits” in international law usually imply a limited right of passage or transportation through a foreign territory while maintaining the following elements:

1) full sovereign control of the host State;

2) border and customs regulation;

3) the ability to restrict transit for security reasons.

For example, rail transit through the Kaliningrad region (Russia, Lithuania, EU), where Lithuanian jurisdiction and control are fully maintained. However, analysing the text of the Washington Declaration allows us to identify the following key elements:

a) *"Unimpeded connectivity"* may imply Armenia's renunciation of the right to impose any restrictions, checks and control, which can be considered as a limitation of the function of a sovereign state. In other words, this may imply that Armenia has no right to set any restrictions (quotas, inspections, duties), although under international law transit is always carried out taking into account the laws of the transit state itself. And if we approach it critically, even the “unimpeded connectivity” formula can be interpreted in such a way that actual control over a part of the territory of the Republic of Armenia is created, even without formal alienation, while Article 2(1) of the UN Charter enshrines the principle of sovereign equality of states.

b) The external provision of the project by third parties (USA) is manifested in the transfer of control over compliance with the transit regime to foreign persons;

c) The strategic goal of the route is to ensure a permanent connection between Baku and Nakhichevan, which creates a long-term restriction of Armenia's control rights over a certain area of the territory;

d) A functional loss of jurisdiction can be considered. In fact, Armenia will not actually be able to apply its laws in this zone of the “corridor”, regulate security and customs procedures in this area.

e) The strategic goal (the Baku-Nakhichevan link) can be considered not as an ordinary trade route, but even as an element of an ambitious geopolitical project of pan-Turkism (Greater Turan), i.e. Turkey's connection with Nakhichevan and Azerbaijan and the rest of the “Turkic world”, which is capable of politically disrupting the balance of power in international relations.[46]

That is, under the auspices of international guarantees from the United States, we can say that control over the corridor is actually being withdrawn from the hands of Armenia. It turns out that TRIPP cannot be fully considered as a classic easement, but in fact represents a zone where the state loses elements of full-fledged control as a sovereign over a certain area of its territory. Of course, from the point of view of some international lawyers, such a transit regime does not mean the loss of sovereignty, even if nominal control remains, as, for example, in the case of Kaliningrad or Panama Channel. However, one should not forget that sovereignty means full state control over its territory, including border control, customs control, and the right to restrict the movement of persons and goods. And if the transit regime excludes these elements, then this can already be considered as a limitation of sovereignty.

Of course, the declaration does not mean the transfer of the territory itself, but in fact it "breaks" the fullness of Armenia's sovereign power: some of the powers (for example, control over transport) no longer belong to the host state. This can be qualified as a limited foreign “protectorate” or an easement/transit with elements of external control, which runs counter to territorial integrity in a functional sense. For example, this can be compared to international demilitarized zones, where the sovereign country is nominally preserved, but has no real power. In this context, we can talk about changing the territory by virtue of the law on the referendum, even if the borders of the territory themselves do not change.

At the same time, it should be recalled that the Law of the Republic of Armenia "On Referendum" establishes that any changes to the territory are subject to mandatory popular vote (referendum).[47] The actual delegation of control functions to foreign guarantors and the relinquishment of control over a part of the territory can be considered as a change in the status of the territory, even without the formal transfer of the territory to another State. Consequently, the implementation of TRIPP

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[46] Zangezur Corridor: Game-changer for Turkic World or a challenge for regional powers?. Available at: https://www.turkiyetoday.com/region/zangezur-corridor-game-changer-for-turkic-world-or-a-challenge-for-regional-powers-3205365

[47] The Law of the Republic of Armenia "On Referendum". Available at: https://www.arlis.am/hy/acts/120709

Agreement without holding a referendum can be considered contrary to the Constitution of the Republic of Armenia and the Law on the Referendum, which gives grounds to adopt Article 46 of the VCLT and even Article 52, if it is possible to prove that the agreement is a consequence of the use of force or threat of force on the part of Azerbaijan.

Of course, at first glance, the participation of third States, especially such as the United States, as intermediaries in concluding international agreements may be perceived as a factor precluding the possibility of declaring a treaty null and void on the basis of Article 52 of the VCLT. However, the legal assessment of such agreements requires a deeper analysis of the essence of coercion and the sources of threat in international law. Note that according to Article 52 of the VCLT: *"A treaty is null and void if its conclusion was achieved through the threat or use of force in violation of the principles of international law enshrined in the UN Charter".* At the same time, a key element in recognizing a treaty as null and void is the presence of coercion to conclude an agreement committed in violation of the principles of the UN Charter, primarily the prohibition of the threat of force and the inviolability of the territorial integrity of states. It is essential that the threat can come either directly from a party to the agreement, or in a more indirect form, through the creation of military and political pressure, even in the formal absence of direct action on the part of the mediator.

At the same time, mediation is a formal, not an exclusive feature. The fact that a third party participates as an intermediary (for example, the United States in the negotiations on the so-called *"Zangezur Corridor"*) does not exclude the application of Article 52 if coercion comes from one of the participants in the negotiations, and the mediator does not prevent these threats or even does not know about them. In other words, international law considers the actual circumstances of coercion rather than the formal status of an intermediary. This is confirmed by the precedent of the Munich Agreement of 1938, when France and Great Britain acted as mediators, but the result of their actions was an agreement signed by Czechoslovakia under threat of aggression from Germany. Despite the fact that France and Great Britain did not use force, international law recognised the agreement as null and void, since its conclusion was the result of military blackmail.

Moreover, it is necessary to take into account the military-political context around the "corridor" and assess whether the treaty providing for the creation of the *"Zangezur Corridor"* is signed by Armenia under the conditions (including but not limited to):

1) threatening statements by Azerbaijan about the use of force; or
2) the use of military force (shelling, movement of troops, seizures); or
3) pressure on the Armenian side in the format of ultimatums, etc., then such an agreement, regardless of the format of the U.S. participation, can be considered null and void under Article 52, since:

a) it is concluded under threat of force;
b) violates the principles of sovereignty and territorial integrity; and
c) reflects a situation not of voluntary consent, but of forced concession under pressure.

The presence of an intermediary does not negate the obligations of the parties to act in good faith and comply with the principles of international law. If the intermediary State ignores or does not see or does not want to see the pressure of one of the parties and forms the "framework" of the treaty legitimising such pressure, its participation cannot neutralise the legal fate of the treaty. As the International Court of Justice pointed out in *Burkina Faso v. Mali (1986),*[48] even the consent of the parties to change borders cannot be considered valid if it is not obtained within the framework of legal procedures and not voluntarily.

Thus, mediation by the United States or any other third power does not exclude the possibility of applying Article 52 of the VCLT, if it can be proved that the conclusion of the Zangezur Corridor agreement took place under threat of force from Azerbaijan. For example, if we rely on documented cases of shelling and military activity of Azerbaijan near Syunik, recorded in reports of international organizations (OSCE, etc.), as well as statements by Azerbaijani officials containing direct or indirect threats of the use of force, etc., which is a separate topic of in-depth research. In this case, the contract should be declared void *ipso jure*, that is, automatically, without the need for additional justification of invalidity. This corresponds to the modern doctrine of *jus cogens* and serves as a guarantee against the legitimization of territorial concessions obtained by political pressure. Moreover, in addition to the considered grounds for the invalidity of the agreement (internal violations and coercion), it is necessary to separately analyze the possible contradiction of the content of the agreement with the peremptory norms of international law (*jus cogens*) in the sense of article 53 of the VCLT.

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[48] Frontier Dispute (Burk. Faco v. Mali), 1986 I.C.J. 3 (Order of Jan. 10)

Thus, according to Article 53: *"A treaty is void if, at the time of its conclusion, it contradicts a peremptory norm of general international law. As far as this Convention is concerned, a peremptory norm of general international law is a norm that is accepted and recognized by the international community of States as a whole as a norm from which deviation is unacceptable and which can only be changed by a subsequent norm of general international law of the same nature."* As we can see, such norms have the highest legal force, and deviation from them is unacceptable even with the consent of the parties.

The doctrine and practice of international law recognizes that jus cogens includes, in particular the principle of non-use of force in international relations (art. 2 (4) of the UN Charter); the principle of territorial integrity of States; as well as the principle of the inadmissibility of acquiring territories under threat of force or as a result of aggression. If the proposed agreement under TRIPP (or any similar initiative on the Zangezur Corridor) provides for:

1) the actual loss of control over the territory of Armenia without the legitimate will of the people;

2) an imposed transit regime that excludes sovereign governance;

3) elements of external management of the territory, including control by foreign military or security structures;

4) if it is signed under threat of use of force from Azerbaijan,

All this may indicate a violation of the principles of jus cogens, namely territorial integrity, the inadmissibility of the use of force and, more broadly, the principle of free and voluntary conclusion of international agreements. International practice confirms that contracts concluded bypassing or contradicting such norms are not just contested, but legally null and void. For example, the case of *Nicaragua v. USA (ICJ, 1986)* recognized the prohibition of the use of force as a peremptory norm. And in the context of the Munich Agreement of 1938, it was noted that even consent given under threat of aggression could not produce valid legal consequences.

Thus, even if coercion is not proven in accordance with Articles 51 and 52, the very content of the contract can be qualified as contrary to jus cogens, which makes it null and void by virtue of Article 53 of the VCLT, without the need for additional procedures. This provides an additional legal shield against the legalization of agreements imposed under conditions of inequality, pressure or strategic coercion, even if they are formally signed with the participation of third States or under international guarantees.

Moreover, it should be noted that the threat of force and coercion in the sense of Articles 51 and 52 of the VCLT is commonly interpreted quite broadly, especially in the light of modern international law and the practice of the International Court of Justice.[49] For example, coercion covers not only the direct use of force, but also the threat of its use. Such a threat may be:

1) explicit (explicit), for example, an ultimatum, a threat of military action;

2) implicit, demonstration of force, movement of troops, aggressive statements;

3) structural (coercive context), diplomatic, political or military pressure that deprives a party of free will.

International law takes into account the entire context, not just formal threats. It should be recalled that the principle of prohibiting the threat of force is enshrined in Article 2(4) of the UN Charter and is an imperative norm *(jus cogens*). This means that any threat that violates this principle invalidates the treaty (Art. 52). For example, in the case of *Nicaragua v. USA (ICJ, 1986),* the ICJ emphasized that the threat of force can be not only military, but also political if it violates the principle of sovereignty.[50]

4. The limited applicability of the *Ihlen Declaration* case (1933) to modern cases of territorial cession: between estoppel and *jus cogens*.

One of the frequently mentioned case law in discourses about the legal force of declared officials concerning territorial issues is the case of *East Greenland (1933)*,[51] which dealt with the so-called *Ihlen Declaration*, an oral statement by the Norwegian Foreign Minister about what kind of state it is that should not outrage Denmark's sovereignty over East Greenland. The PCIJ recognised this statement as

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[49] Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)

[50] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, l.C.J. Reports 1986, p. 14.

[51] Fitzmaurice, Malgosia; Olufemi Elias (2005). Contemporary issues in the law of treaties. Eleven International Publishing. pp. 13–4. ISBN 90-77596-06-2.

legally binding, despite Norway's subsequent attempts to challenge it, citing internal restrictions on the Minister's powers. Of course, some legal researchers and practitioners may refer to this precedent in an attempt to justify the legality of similar statements or even contractual concessions made by representatives of States, despite the possible abuse of authority. However, in our opinion, such an analogy cannot be mechanically transferred to modern disputes concerning territorial changes, especially if they are accompanied by coercion, threat of use of force or carried out in conditions of armed conflict. In this context, it is necessary to identify a number of differencies.

First, the Norwegian Foreign Minister's declaration was made outside the context of military pressure, threats of force, coercion, or aggression. That is, in the *Ihlen Declaration* case, the minister's statement can be considered as a conscientious and voluntary expression of the official position of the state within the framework of diplomatic communication. In contrast, in modern conflicts, territorial changes, concessions, or burdensome obligations can occur under conditions of explicit or implicit coercion, accompanied by threats of force, ultimatums, or actual acts of violence. Such circumstances, of course, should be considered in the context of Article 52 of the VCLT (1969). Accordingly, even if a statement or agreement formally originates from an official, it cannot be considered valid if it is made under pressure that violates the norms of *jus cogens*.

Secondly, the decision in the *Ihlen Declaration* case was largely based on the application of the estoppel principle. However, in modern practice of international law, it has been understood that estoppel cannot be used to legalize acts committed in violation of peremptory norms (jus cogens). As is follows from the decisions of the International Court of Justice (in particular, from the cases of *Kosovo* or *Nicaragua*),[52] territorial changes achieved under pressure or as a result of aggression cannot be legitimised either by the behavior of the parties or by their silence.

Thirdly, at the time of the decision in the *Ihlen Declaration* case, international law did not yet have a modern structure for protecting sovereignty and territorial integrity. That is, the VCLT as such did not yet exist. In particular, in modern international law, the principle of prohibiting the threat or use of force, enshrined in Article 2(4) of the UN Charter, has the status of a peremptory norm, in contrast to the early stages of the formation and development of international law. In particular, modern international law proceeds from the fact that no State can acquire territory as a result of aggression, even if the other side has expressed consent under pressure or coercion. Thus, any territorial concessions obtained under threats, ultimatums, or after the use of force will be legally null and void, regardless of the form or source of such consent.

Fourthly, in the *Ihlen Declaration* case, an oral declaration was considered, which had the character of a unilateral political and diplomatic statement. Modern territorial changes, as a rule, are formalised in the form of treaties, which are subject to control for compliance with both constitutional and *jus cogens* norms. Thus, even if a treaty is signed by an authorized person, but its content violates the fundamental principles of international law, it is considered void *ab initio* (from the very beginning).

Although the *Ihlen Declaration* case remains an important precedent in the context of the binding nature of unilateral declarations by States, it cannot serve as a justification or legal basis for recognizing the validity of territorial changes or concessions made under conditions of coercion, threat or use of force. Modern international law, based on the norms of jus cogens and the principles enshrined in the UN Charter and the VCLT, establishes stricter criteria for the admissibility of such acts. Accordingly, the analogy with the *Ihlen Declaration* case in the context of violation of territorial integrity and constitutional and legal norms, accompanied by an aggressive policy, is legally incorrect and conceptually limited.

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[52] See: Advisory opinion of the International Court of Justice on the accordance with international law of the unilateral declaration of independence in respect of Kosovo : note : addendum / by the Secretary-General; Seealso: Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, l.C.J. Reports 1986, p. 14.

Conclusion.

In response to the research questions raised, it can be concluded that, firstly, in accordance with articles 46, 48 and 52 of the VCLT, an international treaty can be declared invalid if it was concluded in violation of basic internal procedures (such as mandatory referendums), if it is based on a fundamental error, or if it is signed under duress. Secondly, within the constitutional framework of the Republic of Armenia, any international treaty implying a change in the territory of a state cannot be considered legitimate without observing constitutional procedures, in particular, parliamentary approval and, possibly, a national referendum, as required by constitutional norms governing sovereignty. An international treaty signed exclusively by the Prime Minister and which does not meet these requirements will have no constitutional force and may be challenged both in accordance with domestic and international law.

Despite the importance of the *pacta sunt servanda* principle, it must be recognised that international law provides for certain exceptions in which an international treaty may be declared invalid or void, regardless of its formal ratification. In particular, this applies to Articles 46, 48 and 52 of the VCLT. Thus, Article 46 allows for the possibility of challenging the validity of a treaty if, at its conclusion, internal norms of particular importance were violated (including the constitutional requirements for holding a referendum). Article 48 provides for the possibility of declaring a treaty invalid in the event of an error affecting the basis of the State's consent to be bound by the treaty. The most significant exception is Article 52, according to which a treaty concluded under threat or use of force, in violation of the UN Charter, is void *ipso jure,* that is, invalid from the moment of its conclusion and does not give rise to legal consequences. Thus, the priority of international law over the Constitution is not absolute, and should not be used as a tool to legitimize agreements obtained as a result of coercion, error, or violation of fundamental domestic procedures. The role of the Constitution in this context is not only to translate international obligations into the national legal system, but also to provide legal protection mechanisms against illegal international agreements that violate sovereignty, territorial integrity and democratic procedures.

Therefore, in the context of the Zangezur Corridor project and the TRIPP initiative, the implementation of Armenia's international obligations cannot take place bypassing the fundamental norms of the Constitution and without observing the constitutional procedural guarantees established by domestic law of the Republic of Armenia. If there are grounds provided for in Articles 46, 48 and 52 of the VCLT, the Republic of Armenia has the right to challenge the validity or nullity of such treaties in international law, regardless of their formal international status or the participation of third intermediaries.